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Response

Serial No.: 10/676,324

Confirmation No.: 6481

Filed: September 30, 2003

For: PRODUCTION OF HYDROGEN FROM ALCOHOLS

Remarks

The Final Rejection mailed July 21, 2006, the Advisory Action mailed September 21, 2006, and the Notice of Panel Decision from Pre-Appeal Brief Review mailed January 19, 2007 have been received and reviewed. No claims having been added, amended, or canceled herein, the pending claims are claims 1-24, 26-33, 35-40, and 42-50.

Reconsideration and withdrawal of the rejections are respectfully requested in view of the remarks presented herein.

Rejections under 35 U.S.C. §103(a)

The only rejections maintained in the Final Office Action mailed July 21, 2006 were the rejections under 35 U.S.C. §103(a) of claims 1-7, 13-21, 26-30, 35-37, 42-45, and 50 as being unpatentable over Maruko (CA 2323728) in view of Krummenacher et al. ("Catalytic Partial Oxidation of Higher Hydrocarbon at Millisecond Contact Times: Decane, Hexadecane, and Diesel Fuel"); claims 8-12, 22-24, 31-33, 38-40, and 46-49 as being unpatentable over Maruko in view of Krummenacher et al. as applied to the claims above and further in view of Anzai et al. (2003/0060364 A1); claims 1-24, 26-33, 35-40, and 42-50 as being unpatentable over Anzai et al. in view of Krummenacher et al. and Hu et al. (U.S. Patent No. 5,597,771); and claims 1-24, 26-33, 35-40, and 42-50 as being unpatentable over Anzai et al. in view of Maruko and Krummenacher et al.

In the Responses submitted September 6, 2006 and October 12, 2006, and in the Pre-Appeal Brief Request for Review submitted December 21, 2006, Applicants noted that the present application claims priority to U.S. Provisional Application Serial No. 60/415,072, filed October 1, 2002. Applicants also noted that all the rejections rely on Krummenacher et al., and thus, because Krummenacher et al. published after the priority date of the present application, Krummenacher et al. is not available as art under 35 U.S.C. §102 and/or §103 against the present application. Applicants maintain their position on the record, and reserve the right to further argue their position, that because the present claims are fully supported by U.S. Provisional

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Application Serial No. 60/415,072, filed October 1, 2002, Krummenacher et al. is not available as art under 35 U.S.C. §102 and/or §103 against the present application.

Further, as discussed in the the Pre-Appeal Brief Request for Review submitted December 21, 2006, two documents identified as Krummenacher et al. were listed on a 1449 form submitted with an Information Disclosure Statement filed January 14, 2004 by Appellants, namely: Krummenacher et al., "Catalytic partial oxidation of higher hydrocarbons at millisecond contact times: decane, hexadecane, and diesel fuel," *Journal of Catalysis*, 215:323-343 (2003) (Exhibit A); and Krummenacher et al., "Catalytic Partial Oxidation of Higher Hydrocarbons at Millisecond Contact Times: Decane, Hexadecane, and Diesel Fuel," 18th North American Catalysis Society Meeting, Cancun, Mexico, June 1-6, 2003; 2 pgs. (Exhibit B). Thus, the record is not clear as to which Krummenacher et al. document the Examiner is relying on for the present rejection. However, because both documents were available or published in 2003, Applicants are responding to the rejections under 35 U.S.C. §103(a) as if the rejections relied on either or both Krummenacher et al. documents.

In the interest of expediting the prosecution of the present application, Applicants are responding to the rejections under 35 U.S.C. 103(a) with a Declaration under 37 C.F.R. §1.132 submitted herewith.

Declaration under 37 C.F.R. §1.132

A Declaration under 37 C.F.R. §1.132 is being submitted concurrently herewith, in which Lanny D. Schmidt declares that he is "an inventor of any subject matter that is commonly disclosed between the above-identified U.S. Patent Application Serial No. 10/676,324 and Exhibits A and/or B." (Section 4 of the Declaration under 37 C.F.R. §1.132). For at least this reason, Applicants respectfully submit that Krummenacher et al. cannot be used as art against the present application under 35 U.S.C. §102(a). *See, for example*, M.P.E.P. §§ 715.01(c), 716.10, and 2132.01.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) are respectfully requested.

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Summary

It is respectfully submitted that all the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives at the telephone number listed below if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Commissioner for Patents, Mail Stop RCE, P.O. Box 1450, Alexandria, VA 22313-1450, on this 21 day of February, 2007, at 3:45 pm (Central Time).

By: 

Name: Sandy Truchart